BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendrayer	Chair
Marshall Johnson	Commissioner
Ken Nickolai	Commissioner
Thomas Pugh	Commissioner
Phyllis A. Reha	Commissioner

In the Matter of Interstate Power Company's Request for Approval of a Community-Based Energy Development Tariff

ISSUE DATE: July 28. 2006

DOCKET NO. E-001/M-05-1883

ORDER APPROVING A COMMUNITY-BASED ENERGY DEVELOPMENT TARIFF AS MODIFIED

PROCEDURAL HISTORY

On December 1, 2005, Interstate Power Company (Interstate) petitioned the Commission for approval of its proposed Community-Based Energy Development (C-BED) tariff.

On February 2, 2006, Windustry, the Minnesota Project, Institute for Self-Reliance, and Minnesotans for an Energy Efficient Economy (ME3) (Joint Commentators) filed joint comments.

On February 2, 2006, the Minnesota Department of Commerce (the Department) filed comments recommending approval with modifications subject to the Company providing additional information.

On February 21, 2006, Interstate and the Joint Commentators filed reply comments.

On March 29, 2006, the Department filed supplemental comments.

On June 7, 2006, Interstate filed reply to reply comments.

The Commission met on July 13, 2006 to consider this matter.

FINDINGS AND CONCLUSIONS

I. BACKGROUND

The 2005 Minnesota Legislature enacted Minn. Stat. § 216B.1612 to encourage community based wind energy (C-BED) projects. All Minnesota utilities are required by the statute to put a tariff in place to encourage and promote local participation in wind energy development.

Subdivision 1 of that statute states the purpose of a C-BED tariff as follows:

> A tariff shall be established to optimize local, regional, and state benefits from wind energy development and to facilitate widespread development of community-based wind energy projects throughout Minnesota.

Under this legislation, C-BED projects are to provide for local ownership, development and expansion of wind projects in Minnesota. The legislation establishes detailed project ownership criteria dependent on the size of the project, fixes a payment limit and pattern for the pricing stream and allows each utility to work within its own resource cost and reliability requirements to determine the acceptance of C-BED projects under this tariff.

Consistent with the statutory language, the tariff is not a standing offer to buy all C-BED wind energy, however, nor does it set a specific price for such energy. The C-BED tariff is to provide a framework for qualifying wind energy developers and utilities to negotiate power purchase agreements (PPAs).

II. Interstate's Proposed C-BED Tariff

Unlike the petitions of other utilities required to file under Minn. Stat. § 216B.1612 filed to date with the Commission, Interstate's proposal is for a C-BED rider rather than a stand-alone tariff.

Interstate's proposed tariff language contains provisions for the following:

- the obligations of the utility company;
- the requirements of a power purchase agreement;
- the qualifications of C-BED owner and project;
- the project qualifications;
- the rates under the proposal; and
- the conditions necessary for C-BED service.

III. Issues Remaining Open

After comments and reply comments of the parties, at the time of the hearing a handful of issues remained unresolved with respect to Interstate's C-BED tariff.

1. Implementation of C-BED Statute Through Rider

The first issue is whether the C-BED statute can be implemented through a rider to the tariff, or must be a stand-alone tariff.

The Department initially took the position that the Minnesota Statutes § 216B.1612 did not address whether C-BED service was limited to retail customers of a utility and that Interstate is restricting the provision of service to retail customers.

Interstate acknowledged that its tariff is limited to retail transactions, and not wholesale transactions, and further asserted that tariffs pertaining to wholesale transactions would fall under the jurisdiction of the Federal Energy Regulatory Commission (FERC).

At the hearing on this matter, the Department further explained its position, acknowledging that its initial thoughts on this issue had perhaps been too restrictive. The Department expressed the view that implementing the C-BED statute through a rider to the tariff was permissible, and that it had no intent to thwart community-based projects.

2. Allocation of Costs of Purchased Power for C-BED Projects in Minnesota

Interstate argued that if it must limit the tariff's applicability to C-BED projects located in Minnesota, it will then pass through the costs of the purchased power to Minnesota customers only, through the Minnesota energy supply cost adjustment. Interstate agreed to remove the size restriction of 10 MW, to which the Joint Commentators had objected.

The Department disagreed with Interstate, as to its suggestion of assigning C-BED project costs only to Minnesota customers. The Department argued that Interstate's proposal goes beyond the provisions of the law without any technical or legal analysis to support its position of assigning the costs only to Minnesota customers. The Department asserted that allocation of C-BED project costs should be systemwide.

3. How Applications Will be Processed

The Joint Commentators proposed that Interstate provide an outline of how the Company will solicit, evaluate and select projects.

Interstate stated that it will use the process developed under Minn. Stat. § 216B.1611, subds. 2 and 3 to implement its statutory obligation to purchase distributed generation, arguing that it would be inappropriate to develop a parallel process for C-BED projects.

4. Distribution Credit Study

The Joint Commentators requested that a distribution credit study be incorporated with the interconnection feasibility study.

Interstate argued that adding a distribution credit study would go beyond the requirements of the Minnesota distributed generation interconnection process, which provides a time line with deliverables for the interconnection study. Incorporating a distribution credit study would go beyond the level of effort required.

5. Projects Not Directly Interconnected with Interstate

The Joint Commentators proposed that any C-BED project in Minnesota meeting eligibility requirements should be able to take service under this tariff.

Interstate objected, arguing that this is a retail tariff. Qualifying for a retail tariff requires the project to be in Interstate's territory.

6. Reporting Requirements

The Department proposed the six reporting requirements to be made annually, common to all C-BED tariff proposals:

1. The number of proposals submitted to the Company under the tariff, including proposed size (MW), location, price and length of contract;
2. The number of proposals rejected and the reason for which the proposal was rejected;
3. The number of proposals that adopted service under an alternative Company tariff;
4. The number of executed contracts including size (MW), location, price and length of contract;
5. Steps taken by the Company to address part(a) under Subdivision 5 of the law; and
6. Any other pertinent information the company wishes to provide.

Interstate voiced no objections, except as to the fourth requirement – the number of contracts, size, location, price, length of contract. Interstate argued that these may be redundant and should be part of the biennial resource plan filing, as opposed to in annual filings.

The Department also proposed that Interstate report C-BED proposals rejected because of lack of transmission capacity and include a discussion of potential upgrades in the biennial transmission plan.

Interstate objected to this request as unreasonable and administratively burdensome, claiming that such "testing the waters" could cost Interstate resources for studies, the costs of which would go unrecovered.

IV. Commission Analysis and Action

Prior to the hearing on this matter, the Joint Commentators communicated additional areas of agreement regarding the C-BED tariff.

Based on it own review and taking into consideration the comments of the Department and the Joint Commentators, the Commission will approve Otter Tail's C-BED tariff as modified herein.

As to the issue of whether the C-BED statute can be implemented through a rider to the tariff, the Commission finds that Interstate has made a compelling argument that justifies the implementation through a rider in this instance. Interstate's C-BED tariff is limited to retail transactions and not wholesale transactions. As indicated by Interstate, tariffs pertaining to wholesale transactions would fall under the jurisdiction of the Federal Energy Regulatory Commission (FERC).

With respect to the allocation of costs of purchased power for C-BED projects in Minnesota, the Commission will order Interstate to allocate the purchased power cost systemwide. Interstate's position -- that if it must limit the tariff's applicability to C-BED projects located in Minnesota, it will then pass through the costs of the purchased power to Minnesota customers alone – would be highly unusual, and unsupportable.

Minn. Stat. § 216B.1612, subd. 1 states:

> A tariff shall be established to optimize local, regional, and state benefits from wind energy development and to facilitate widespread development of community-based wind energy projects throughout Minnesota.

The statute recognizes that the benefits of wind developed in Minnesota extend beyond Minnesota, to the region. Further, the Commission's reasoning in it June 1, 2004 REO Order[1] provides analogous support for flowing the costs to Interstate's ratepayers throughout the system.

> [U]tilities routinely rely on out-of-state generation to meet Minnesota demand, since they do plan resources acquisitions on a system-wide basis and since they increasingly serve customers in more than one state. It would be anomalous, to say the least, to permit a Minnesota utility to use out-of-state coal generation to serve Minnesota customers but not to recognize out-of-state renewable generation as a meaningful part of its portfolio.

The Commission recognizes that physically there is no way to limit the power flow to Minnesota alone. Finally, the Commission requires Minnesota customers to pay for power produced for Interstate in another state unless it can be shown that the utility was imprudent or negligent in acquiring the power, or that it came as a result of fraud. For these reasons, the Commission will order allocation of the purchased power cost systemwide.

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[1] *In the Matter of Detailing Criteria and Standards for Measuring an Electric Utility's Good Faith Efforts in Meeting the Renewable Energy Objectives under Minn. Stat. § 216B*.1691, Docket No. E-999/CI-03-869 (June 1, 2004).

The Commission will not require Interstate to outline its response to C-BED proposals as requested by the Joint Commentators. The Commission has required no other utilities to do so in obtaining the approval of a C-BED tariff, and sees no basis to do so in this matter.

Nor will the Commission require a distribution credit study, as requested by the Joint Commentators. Adding such a study would go beyond the requirements of the Minnesota Distributed Generation interconnection process, and could result in unrecovered expense for the utility.

The Commission also rejects the Joint Commentators' proposal that any C-BED project in Minnesota meeting eligibility requirements should be able to take service under this tariff. Qualifying for a retail tariff requires the project to be in Interstate's service territory. As the Commission has determined that the C-BED project needs to interconnect directly with Interstate as a retail customer, the Commission will also reject this proposal.

With respect to the reporting requirement issues, the Commission has required other utilities seeking approval of C-BED tariffs to file the information requested annually, but allowing every other year's biennial resource plan filing to be sufficient for that year. The Commission will require Interstate to meet reporting requirements information annually, either as part of the biennial resource plan filing or separately.

Finally, the Commission will require Interstate to track and report proposals that were rejected due to capacity constraints, as such information will likely prove useful for transmission planning. However, the Commission recognizes as valid the concerns raised by Interstate. To avoid tracking and reporting requirements if proposals were not well-developed, the Commission will require that Interstate track and report only on serious C-BED proposals rejected due to capacity constraints.

ORDER

1. The Commission hereby approves Interstate's C-BED tariff as reflected in Interstate's Reply to Reply Comments of June 6, 2006, as modified below.

2. Interstate shall implement the C-Bed statute through a rider to the tariff.

3. Interstate shall allocate the purchased power cost systemwide.

4. Interstate shall file reporting requirements information annually, either as part of the biennial resource plan filing or separately.

5. Interstate shall require track and report serious C-BED proposals rejected due to capacity constraints.

6. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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